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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

YUDAYA NANYONGA,

Plaintiff

v.

IMMIGRATION AND NATURALIZATION
SERVICE, et. al,

Defendants

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CIVIL NO. 1:CV-00-1034

(Judge Caldwell)

FILED
HARRISBURG, PA

JUN 1 2001

MEMORANDUMMARY E. D'ANDREA, CLERK
PER 9/8 DEPUTY CLERKI. Introduction.

Defendants, York County, York County Prison, Thomas Hogan and Christopher Reilly (the "York County Defendants"), have filed a motion to dismiss the Plaintiff's complaint for failure to effect service upon them. They also request dismissal with prejudice because service on them now would be beyond the statute of limitations. We presume the motion is made under Fed. R. Civ. P. 12(b)(5). The Plaintiff has filed a cross-motion under Fed. R. Civ. P. 4(m) for enlargement of time to effect service.

Plaintiff, Yudaya Nanyonga, filed this civil rights action setting forth constitutional and state-law tort claims arising from treatment she received during her classification at the York County Prison as a detainee of the Immigration and Naturalization Service ("INS"). Nanyonga names the INS and Doris Meissner, the INS Commissioner (the Federal Defendants) as well as

the York County Defendants. Hogan is the prison warden and Reilly is a member of the York County Board of Commissioners. Twenty-five John and Jane Does have also been named.

For the reasons outlined below, the court will exercise its discretion to extend the time for service on the York County Defendants, and we will therefore deny their motion to dismiss.

II. Background.

The complaint alleges as follows. On or about June 9, 1998, Nanyonga was transported to the York County Prison as an INS detainee seeking political asylum. (Complaint, ¶ 12). Upon her arrival, she was erroneously reclassified to maximum security status. She was then stripped naked and bound to a bed in a spread-eagle position. (*Id.* at ¶¶ 14 and 16). During this time, she was subjected to racial slurs. (*Id.* at ¶ 15). The Plaintiff was also injected with unknown drugs causing her to lose consciousness for about two days. For these two days, she remained naked and restrained to the bed in the spread-eagle position.

The complaint asserts various theories of liability against the different Defendants. Nanyonga seeks both monetary and declaratory relief for physical and emotional injuries allegedly suffered as a result of Defendants' actions.

Through New Jersey counsel, Nanyonga filed her complaint on June 8, 2000, two years minus one day from the date she was

allegedly assaulted.¹ The Plaintiff used certified mail as a way to serve the York County Defendants. The mailing did not contain a request that the Defendants waive service under Fed. R. Civ. P. 4(d)(2). The Plaintiff's return of service indicates that on June 19, 2000, certain individuals at the Defendants' offices signed for the complaint. When the Plaintiff filed a return of service, she justified the use of certified mail by relying on state law, specifically noting as follows: "Certified Mail/RRR-NJ."

In the meantime, the Plaintiff also used certified mail as a way of serving the Federal Defendants. The Plaintiff's return of service indicated that individuals at these Defendants's offices had signed for them on June 20, 2000. On August 14, 2000, the Federal Defendants filed a motion to extend the time to respond to the complaint.² On September 14, 2000, they filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6).

On October 17, 2000, Nanyonga filed for a default judgment against the York County Defendants, asserting that they had been served by certified mail and that the time for them to

1 Pennsylvania has a two-year period of limitations for bringing suit for personal injuries. This limitations period is also applicable to federal civil rights actions. See Urrutia v. Harrisburg County Police Depart., 91 F.3d 451, 457 n.9 (3d Cir. 1996).

2 Federal defendants have sixty days to answer a complaint. See Fed. R. Civ. P. 12(a)(3)(A) and (B). We also note that the federal government, its agencies, and its officers and employees sued in their official capacities, can be served by certified mail. See Fed. R. Civ. P. 4(i).

answer or otherwise plead to the complaint had expired. On October 25, 2000, the York County Defendants filed their motion to dismiss on the ground that the Plaintiff had not made proper service upon them, noting the attempt to serve by certified mail. (Two days earlier the Defendants opposed the motion for default on the same ground.) Further, because service would now be after the statute of limitations had expired, they sought dismissal with prejudice.

On November 7, 2000, conceding that service by certified mail was improper, the Plaintiff filed her cross-motion under Rule 4(m) for an extension of time to effect service. This motion also withdrew the motion for a default.

III. Discussion.

The Plaintiff did not make proper service on the York County Defendants. Fed. R. Civ. P. 4 governs service in federal court. Unless an individual defendant waives service under Rule 4(d)(2), service cannot be by mail. See Rule 4(e). And while Rule 4(e)(1) allows service under the rules of the state where the district court is located, Pennsylvania does not allow service by mail upon individuals either. See Pa. R. Civ. P. 402. Nor does it allow such service upon a political subdivision, like the defendant county. See Pa. R. Civ. P. 422. See also generally, Staudte v. Abrahams, 172 F.R.D. 155 (E.D. Pa. 1997) (with limited exceptions, neither federal nor Pennsylvania law allow service by mail).

Rule 4(m) requires service of the complaint within 120 days of filing, and if service is not accomplished within that time frame, the court can either dismiss the action or extend the time for service. However, if a plaintiff establishes good cause for her failure to make timely service, the court must grant an extension of time for doing so. As the Rule provides:

(m) Time Limit For Service. If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

In ruling on a motion to extend the time for service, the Third Circuit has decided that the court must employ a two-pronged inquiry. First, it must determine whether good cause for the failure to effect timely service exists. "If good cause is present, the district court must extend time for service and the inquiry is ended." Petrucelli v. Bohringer & Ratzinger, GMBH, 46 F.3d 1298, 1305 (3d Cir. 1995). Second, if good cause does not exist, the court nonetheless has discretion to either dismiss the case without prejudice or extend the time for service. Id.

Rule 4(m) does not define "good cause," but the Third Circuit has equated it with the "excusable neglect" standard under

Fed. R. Civ. P. 6(b)(2). MCI Telecommunications Corp. v. Teleconcepts, Inc., 71 F.3d 1086, 1097 (3d Cir. 1995). Thus, good cause (following from excusable neglect) "require[s] a demonstration of good faith on the part of the party seeking an enlargement and some reasonable basis for noncompliance within the time specified in the rules." Id. "[T]he primary focus is on the plaintiff's reasons for not complying with the time limit in the first place." Id.; Boley v. Kaymark, 123 F.3d 756, 758 (3d Cir. 1997) (quoting MCI Telecommunications, 71 F.3d at 1097)).

In moving for an extension, the Plaintiff argues that she had good cause for not making timely service because her attorneys became confused by the presence in the suit of federal governmental defendants along with the local governmental defendants and the agency relationship that was alleged to exist between them. This led her lawyers to conclude erroneously that service on the York County Defendants could be accomplished under Rule 4(i), the provision governing service on the federal government, its agencies, and its officers and employees sued in their official capacities, as previously noted in footnote 2.³

3 This argument has been made in a "letter brief" which the Plaintiff requests we accept "in lieu of a more formal response . . ." (Doc. 15, p. 5). The Plaintiff's counsel is advised that litigation in this court is governed by the Rules of Court for the United States District Court for the Middle District of Pennsylvania. These rules provide for the form, filing and service of briefs in litigation. Letter briefs will not be accepted hereafter. These rules do not authorize legal arguments in support of motions to be made in letters addressed to the presiding judge. Instead, Local Rule 7.5 requires that a brief, with the caption of

The main difficulty with this argument is that attorney inadvertence cannot be good cause justifying an extension of time. Good cause will not be found based on "inadvertence of counsel," "half-hearted efforts by counsel," or "reliance upon a third party or on a process server." Petrucelli, supra, 46 F.3d at 1307 (internal quotation marks omitted). A plaintiff's "disregard for ... the 'technical niceties' of service of process" does not constitute good cause. Ayres v. Jacobs & Crumplar, P.A., 99 F.3d 565, 568 (3d Cir. 1996)). See also Momah v. Albert Einstein Medical Center, 158 F.R.D. 66, 69 (E.D. Pa. 1994) (failure to timely serve a complaint will not be excused when the omission was due to the attorney's lack of diligence in effectuating the requirements of the rule).⁴

Having concluded that the Plaintiff has not demonstrated good cause for her failure to comply with Rule 4(m), the court now must determine whether we should exercise our discretion to allow Nanyonga to serve the York County Defendants. On this prong of the analysis, the Plaintiff argues that she attempted service in good

the case, be filed with the Clerk of Court. Plaintiff's counsel is advised to familiarize himself with the Local Rules because deviation from the Rules will not be tolerated in the future.

4 Even if we could consider attorney inadvertence, we would not accept such an argument here. The Plaintiff's contention that her lawyers were confused cannot stand in the face of Rule 4(i), which clearly applies only to federal defendants, and Rule 4(j)(2), which directs how local governments are to be served. We also note that the argument conflicts with the Plaintiff's position in the return of service that she was relying on New Jersey law, not Rule 4(i), for service.

faith and prosecuted the action diligently, moving for default relatively quickly against these Defendants when she thought service had been made. In part, she also argues that the running of the statute of limitations (which would preclude a new suit against the moving Defendants) and the lack of prejudice to the Defendants also favor the exercise of our discretion to extend the time for service.

We think this position is basically correct and will exercise our discretion to extend the time for service on the York County Defendants. First, the expiration of the statute of limitations will bar another suit against these Defendants, and that factor may be considered on the side of granting an extension. Petrucelli, supra, 46 F.3d at 1306. Second, the Plaintiff did attempt service, albeit ineffectively. Third, there was no signal that the attempted service had not worked. See, e.g., Adams v. AlliedSignal General Aviation Avionics, 74 F.3d 882 (8th Cir. 1996). Finally, the moving Defendants have not claimed prejudice, see Harley v. City of Philadelphia, 1997 WL 363884, at *2 (E.D. Pa.), and prejudice is further negated by the actual notice the Defendants received by the certified mail. Id. See also Boley, supra, 123 F.3d at 759.

We are buttressed in this conclusion by the argument the York County Defendants have made in support of dismissal with prejudice because of the failure to make service. The Defendants argue we should look to Pennsylvania law and deny an extension when

the statute of limitations has run on an eleventh-hour complaint. We reject this position. Federal law governs this federal procedural issue, not state law. Further, while the Defendants' argument might succeed in another context, see McCurdy v. American Board of Plastic Surgery, 157 F.3d 191, 196-97 (3d Cir. 1998), we are satisfied with the exercise of our discretion here.

An appropriate order is attached.

A handwritten signature in cursive script, reading "William W. Caldwell".

WILLIAM W. CALDWELL
United States District Judge

Date: June 14, 2001

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ORDER

MARY E. D'ANDEA, CLERK
Per.


AND NOW, this 14th day of June, 2001, it is ordered that:

1. Plaintiff's motion for default judgment against the York County Defendants (doc. 8) is deemed withdrawn.

2. The York County Defendants' motion to dismiss the complaint (doc. 11) is denied.

3. Plaintiff's cross-motion for enlargement of time to serve the York County Defendants (doc. 15) is granted.

4. Plaintiff shall have twenty days from the date of this order to effect service on the York County Defendants.



WILLIAM W. CALDWELL
United States District Judge

Standard Order 93-5 () U.S. Marshal () Pltf's Attorney ()
Order to Show Cause () with Petition attached & mailed certified mail
to: US Atty Gen () PA Atty Gen ()
DA of County () Respondents ()
Bankruptcy Court ()
Other Published (x)

MARY E. D'ANDREA, Clerk

DATE: 6-14-01

BY: GU
Deputy Clerk